

duty on the part of the AAM to observe the principles of natural justice when the AAM makes its decisions under these two rules. The AAM has absolute and unfettered powers under rules 63 and 151 of the National Competition Rules to decide on applications by promoters to hold motor race meetings and to decide whether or not to approve the nominations of officials at race meetings. There is no place here for the application of the principles of natural justice and the AAM is also not obliged to give any reason for its decisions which it may make under rules 63 and 151. The AAM is perfectly entitled to withhold its approval under these two rules for any reason whatsoever, not least of which may well be that some particular promoter or official is no longer in the good books of the AAM.

There is insufficient evidence also to find that the AAM was biased, prejudiced or acted *mala fides* against the applicants. The AAM was no doubt displeased with the ROC officials because the outstanding fees owed by ROC was not being paid on time. The AAM had not hidden its displeasure over this as its Director General had told the second applicant that as the ROC was not paying its dues on time the AAM would not approve the principal officers of the ROC as race officials at future race meetings. And displeasure on this score cannot amount to bias, prejudice or *mala fides*. The decisions which the AAM made in this case were within the scope of the National Competition Rules and they cannot be challenged in a court of law.

The originating summons taken out by the applicants against the respondent is accordingly dismissed with costs.

Order accordingly.

Solicitors: R.K. Nathan; Lovelace & Hastings.

A PANG NENG TIONG v. PUBLIC PROSECUTOR

[A.Cr.J. (Chong Siew Fai J.) July 10, 1987]

[Sibu — Criminal Appeal No. 8 of 1987]

Criminal Procedure — Charge not framed properly — Penal sections quoted were not appropriate — Penal Code, ss. 393, 397 & 511.

In this case, the appellant was, on his own plea of guilty, convicted of the offence of attempted robbery. The charge stated that the offence was under section 397 of the Penal Code, read with section 511 of the Penal Code. The appellant appealed against the sentence of two strokes of the rattan.

Held, dismissing the appeal: (1) section 511 had no application where there was express provision for punishment for an offence under Penal Code. The appellant therefore should have been charged under section 393 read with section 397 of the Penal Code;

(2) this was a proper case for the charge to be substituted with one under sections 393 and 397 of the Penal Code. However, the conviction was to remain;

(3) there was no ground for contending that the sentence of two strokes of the rattan was manifestly excessive.

Case referred to:

(1) *Sivalingam v. Public Prosecutor* [1982] 2 M.L.J. 172.

CRIMINAL APPEAL.

Appellant in person.

Puan Siti Aishah bte Osman (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Chong Siew Fai J.: In this case, the appellant was, on his own plea of guilty, convicted of the offence charged as follows:

"That you on the 29th day of March 1987, at about 1200 noon at Chop Tian Chen Goldsmith, No. 32, Blacksmith Road, Sibu, did an act, to wit, by threatening Fong Yu Soon (m) with a sickle and demanded money from him, which act amounted to an attempt to rob the said Fong Yu Soon (m) and that you thereby have committed an offence punishable under section 397 of the Penal Code read with section 511 Penal Code."

The charge, in my opinion, is improper. So far as is relevant to the instant case, section 511 of the Penal Code provides:

"Whoever attempts to commit an offence punishable by this Code ... with imprisonment or fine or with a combination of such punishments, ... and in such attempt does any act towards the commission of such offence, shall,

where no express provision is made by this Code ... for the punishment of such attempt, be punished with such punishment as is provided for the offence: Provided ..." (Italics added.)

The said section 511 has no application where there is express provision for punishment for an offence under the Penal Code. Under the said Code, punishments are provided in section 393 for attempt to commit robbery, and in section 397 for arming with or using a deadly weapon at the time of attempting to commit robbery. The appellant therefore should have been charged under section 393, read with section 397 of the Penal Code.

On the facts given by the prosecution and admitted by the appellant, it is clear that a case for the offence punishable under the said sections 393 and 397 had been established in the lower court. On the principles as laid down in *Sivalingam v. Public Prosecutor*⁽¹⁾ I find this a proper case that the charge be substituted with one under sections 393 and 397 of the Penal Code and the conviction do remain. I now so order.

As for the appeal against sentence, I have considered the appellant's submission. The appellant

A had committed four offences prior to the present one, *i.e.*

(a) under section 380 of the Penal Code in case No. 452/86. (See record herein.)

B (b) Three offences of theft under section 379 with another person in case No. 75/87. The offences were committed on March 13, 1987 (*i.e.* some two weeks before the present offence under appeal) and the appellant was sentenced to imprisonment, to run concurrently, the longest of the three being two months. The date of sentence was April 28, 1987.

D The appellant had persistently committed thefts. Now he attempted robbery with a deadly weapon. There is no ground for contending that the sentence of two strokes of the rattan is manifestly excessive in the circumstance.

The appeal is dismissed.

E

Appeal dismissed.